

105TH CONGRESS  
1ST SESSION

# H. R. 771

To amend the Internal Revenue Code of 1986 and the Revenue Act of 1978 to revise the procedures applicable to the determination of employment status.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 1997

Mr. LANTOS (for himself and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 and the Revenue Act of 1978 to revise the procedures applicable to the determination of employment status.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Misclassification of  
5       Employees Act”.

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1 **SEC. 2. PROCEDURES APPLICABLE TO DETERMINATIONS**  
2 **OF EMPLOYMENT STATUS.**

3 (a) WAIVER OF EMPLOYMENT TAX LIABILITY FOR  
4 REASONABLE GOOD FAITH MISCLASSIFICATION BASED  
5 ON COMMON LAW RULES.—

6 (1) IN GENERAL.—Section 3509 of the Internal  
7 Revenue Code of 1986 (relating to determination of  
8 employer’s liability for certain employment taxes) is  
9 amended by adding at the end the following new  
10 subsection:

11 “(e) WAIVER OF EMPLOYMENT TAX LIABILITY FOR  
12 REASONABLE GOOD FAITH MISCLASSIFICATION BASED  
13 ON COMMON LAW RULES.—

14 “(1) IN GENERAL.—For purposes of determin-  
15 ing the liability of any taxpayer for employment  
16 taxes with respect to any individual for any period,  
17 such individual shall be deemed not to have been an  
18 employee of the taxpayer for such period if—

19 “(A) the taxpayer did not treat such indi-  
20 vidual as an employee for purposes of the em-  
21 ployment taxes for such period,

22 “(B) the taxpayer’s treatment of such indi-  
23 vidual as not being an employee was based on  
24 a reasonable good faith misapplication of the  
25 common law rules used for determining the em-  
26 ployer-employee relationship,

1           “(C) all Federal tax returns (including in-  
2           formation returns) required to be filed by the  
3           taxpayer with respect to such individual for  
4           such period were filed on a basis consistent with  
5           the taxpayer’s treatment of such individual as  
6           not being an employee,

7           “(D) the taxpayer (and any predecessor)  
8           did not treat any other individual holding a  
9           substantially similar position as an employee for  
10          purposes of the employment taxes for any pe-  
11          riod beginning after December 31, 1977, and

12          “(E) the taxpayer enters into a closing  
13          agreement under section 7121 with the Sec-  
14          retary (in the time and manner determined by  
15          the Secretary) agreeing to treat such individual,  
16          and any other individual holding a substantially  
17          similar position, as employees and to file all  
18          Federal employment tax returns with respect to  
19          such individuals on a basis consistent with the  
20          taxpayer’s treatment of such individuals as em-  
21          ployees.

22          “(2) DEFINITION AND SPECIAL RULES.—

23                 “(A) EMPLOYMENT TAX.—For purposes of  
24          this subsection, the term ‘employment tax’

1 means any tax imposed by this subtitle, includ-  
2 ing any interest, penalty, or additional amount  
3 with respect to such tax.

4 “(B) NO REFUND OR CREDIT OF OVERPAY-  
5 MENT.—No refund or credit of any overpay-  
6 ment of an employment tax resulting from the  
7 application of paragraph (1) shall be allowed,  
8 notwithstanding that the period for filing a  
9 claim for refund or credit of such overpayment  
10 is not barred on the effective date of this sub-  
11 section.

12 “(3) TERMINATION.—This subsection shall not  
13 apply if the closing agreement referred to in para-  
14 graph (1)(E) is entered into more than 1 year after  
15 the date of the enactment of this subsection.”

16 (2) MONITORING OF CLOSING AGREEMENT RE-  
17 QUIRED.—The Secretary of the Treasury or his dele-  
18 gate shall monitor compliance with each closing  
19 agreement referred to in section 3509(e)(1)(E) of  
20 the Internal Revenue Code of 1986 (as added by  
21 this section) for not less than 5 years after the date  
22 such agreement is entered into. Such monitoring  
23 shall include not only monitoring the payments made  
24 to the individuals specified in the agreement but also

1 the aggregate wages paid to employees and the ag-  
 2 gregate payments to independent contractors for  
 3 services.

4 (b) MODIFICATIONS TO SAFE HARBOR FOR CLASSI-  
 5 FICATIONS OF INDIVIDUALS AS NONEMPLOYEES.—

6 (1) REQUIREMENT OF REASONABLE BASIS.—

7 Paragraph (1) of section 530(a) of the Revenue Act  
 8 of 1978 (relating to controversies involving whether  
 9 individuals are employees for purposes of the em-  
 10 ployment taxes) is amended by striking “unless the  
 11 taxpayer had no reasonable basis” and inserting the  
 12 following: “if the taxpayer had a reasonable basis”.

13 (2) ONLY RECENT EMPLOYMENT TAX AUDIT IS  
 14 REASONABLE BASIS.—

15 (A) IN GENERAL.—Paragraph (2) of sec-  
 16 tion 530(a) of the Revenue Act of 1978 is  
 17 amended—

18 (i) by striking the paragraph caption  
 19 and inserting the following: “REASONABLE  
 20 BASIS FOR NOT TREATING INDIVIDUAL AS  
 21 EMPLOYEE.—”,

22 (ii) in the matter preceding subpara-  
 23 graph (A)—

24 (I) by striking “in any case”, and

1 (II) by inserting “only” before

2 “if the taxpayer’s”, and

3 (iii) by striking subparagraph (B) and

4 inserting the following new subparagraph:

5 “(B)(i) an Internal Revenue Service audit

6 of the taxpayer—

7 “(I) was conducted solely for employ-

8 ment tax purposes not more than 3 years

9 before such period, and

10 “(II) included an examination for em-

11 ployment tax purposes of individuals hold-

12 ing positions substantially similar to the

13 positions held by the individual involved,

14 “(ii) upon completion of such audit the

15 taxpayer was notified in writing by the Internal

16 Revenue Service that the treatment for employ-

17 ment tax purposes of the individuals referred to

18 in clause (i)(II) was correct, and

19 “(iii) such notification is not revoked be-

20 fore such period; or”.

21 (B) CONFORMING AMENDMENT.—Subpara-

22 graph (A) of section 530(e)(2) of the Revenue

23 Act of 1978 (as amended by section 1121 of the

24 Small Business Job Protection Act of 1996) is

25 repealed.

1       (c) TERMINATION OF TREATMENT OF CERTAIN  
2 TECHNICAL PERSONNEL.—Subsection (d) of section 530  
3 of the Revenue Act of 1978 is repealed.

4       (d) AUTHORITY FOR REGULATIONS AND RULINGS ON  
5 EMPLOYMENT STATUS.—Subsection (b) of section 530 of  
6 the Revenue Act of 1978 is repealed.

7       (e) PAYORS TO NOTIFY SERVICE PROVIDERS OF  
8 CONSEQUENCES OF EMPLOYMENT STATUS.—

9           (1) Section 6041 of such Code (relating to in-  
10 formation at source) is amended by redesignating  
11 subsection (e) as subsection (f) and by inserting  
12 after subsection (d) the following new subsection:

13       “(e) ADDITIONAL INFORMATION REQUIRED TO BE  
14 INCLUDED ON STATEMENTS COVERING PAYMENTS FOR  
15 SERVICES.—In the case of a statement required under  
16 subsection (d) with respect to any payment for services,  
17 such statement shall be treated as not satisfying the re-  
18 quirements of subsection (d) unless such statement in-  
19 cludes the following information:

20           “(1) The payor is treating the payee as not  
21 being an employee and the payee may be liable for  
22 self-employment tax.

23           “(2) If the payee believes that he should prop-  
24 erly be treated as an employee, an explanation of the

1 procedure for obtaining Internal Revenue Service re-  
2 view of his status.

3 “(3) The payee will not be eligible for any em-  
4 ployee fringe benefits and may lose protections or  
5 benefits under Federal laws relating to fair labor  
6 standards, occupational health and safety, civil  
7 rights, unemployment insurance, and worker’s com-  
8 pensation.

9 “(4) An explanation of tax benefits to the self-  
10 employed such as retirement plans and deduction for  
11 a portion of the cost of health insurance.”

12 (2) Section 6041A of such Code (relating to re-  
13 turns regarding payments of remuneration for serv-  
14 ices and direct sales) is amended by redesignating  
15 subsection (f) as subsection (g) and by inserting  
16 after subsection (e) the following new subsection:

17 “(f) ADDITIONAL INFORMATION REQUIRED TO BE  
18 INCLUDED ON STATEMENTS.—In the case of a statement  
19 required under subsection (e), such statement shall be  
20 treated as not satisfying the requirements of subsection  
21 (e) unless such statement includes the information speci-  
22 fied in paragraphs (1) through (4) of section 6041(e).”

23 (f) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-  
25 graph (2), the amendments made by this section



1 shall take effect beginning on the date which is 120  
2 days after the date of the enactment of this Act.

3 (2) MODIFICATIONS TO SAFE HARBOR; TERMINATION OF TREATMENT OF TECHNICAL PERSONNEL.—The amendments made by subsections (b)  
4 and (c) shall apply to periods ending on or after the  
5 date which is 120 days after the date of the enact-  
6 ment of this Act.  
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9 **SEC. 3. CLASSIFICATION OF INDIVIDUALS AS EMPLOYEES**  
10 **FOR PURPOSES OF UNEMPLOYMENT COM-**  
11 **PENSATION PROGRAM.**

12 (a) UNIFORM FEDERAL AND STATE DEFINITION OF  
13 EMPLOYEE.—Subsection (a) of section 3304 of the Inter-  
14 nal Revenue Code of 1986 (relating to requirements for  
15 approval of State unemployment compensation laws) is  
16 amended by striking “and” at the end of paragraph (18),  
17 by redesignating paragraph (19) as paragraph (18), and  
18 by inserting after paragraph (18) the following new para-  
19 graph:

20 “(19) the determination of whether an individ-  
21 ual is an employee of another person shall be made  
22 in accordance with section 3306(i); and”.

23 (b) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Except as provided in para-  
25 graph (2), the amendments made by this section

1       shall take effect on the 180th day after the date of  
2       the enactment of this Act.

3           (2) SPECIAL RULE.—In the case of any State  
4       the legislature of which has not been in session for  
5       at least 30 calendar days (whether or not successive)  
6       between the date of the enactment of this Act and  
7       such 180th day, the amendments made by this sec-  
8       tion shall take effect 30 calendar days after the 1st  
9       day on which such legislature is in session on or  
10      after such 180th day.

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